no visible marks on the exterior of the body, the limit of the company's liability shall be one-fifth of the amount which would otherwise be recoverable. The purpose of this provision in accident insurance policies is evidently to protect the insurer against the assertion of fraudulent claims, and in construing it we must give it a reasonable construction, always bearing in mind that it is a contract prepared by the insurer, and will be construed most strongly against it. What is meant by visible marks on the exterior of the body? Is it necessary that there shall be lacerations or contusions in order to prevent this provision from depriving the assured of his indemnity? Or does it mean such a changed appearance of the body because of the accident as gives notice to all who may observe it that an injury has resulted? Is there not sufficient difference between the living, breathing, animate body and the dull, cold clay to inform the observer that the assured has been affected as the result of an accident, where that accident results in death? In this instance the assured met with a fatal accident. Immediately his lips were sealed, his eyes became sightless, his heart ceased to beat and respiration stopped. These are such visible evidences upon his body as indicate the result of the accident as unerringly as though he were mangled beyond recognition. Such was the holding of the Supreme Court of Washington in the case of Horsfall *v.* Pacific Mutual Life Ins. Co. (32 Wash. 132, 72 Pac. 1028, 63 L. R. A. 425, 98 Am. St. Rep. 846), the court saying:

'Deathly paleness, cold extremities and cold perspiration on hands and face, and the permanent change of color on the following day from a ruddy hue to a bluish gray, as the result of a dilation of the heart due to a heavy lift, constitute a visible external mark within the meaning of a policy insuring against injuries, but which provides that it does not cover injuries where there are no visible, external marks upon the body produced at the time of and by the accident.' "

The West Virginia court also cited and relied upon Menneily *v.* Employers' Liability Assur. Co. (148 N. Y. 596), Peterson *v.* Locomotive Eng. Mutual Life, etc., Ass'n (123 Minn. 505) and Union Casualty & Surety Co. *v.* Mondy (18 Col. App. 395), and remarked in conclusion:

"We are of opinion that the difference between the appearance of the assured just before the accident when in life and his body immediately after the accident which resulted in death is a sufficient visible mark or indication to meet the requirements of the policy and to justify recovery of the full indemnity provided by the policy."

Master and Servant—Hours of Service—Constitutionality When Permitting Overtime with Extra Pay.—In Bunting *v.* State of Oregon, in the Supreme Court of the United States (April, 1917, 37 Sup. Ct. R. 435), there was under consideration a statute of the State of

Oregon (Laws 1913, chap. 102, § 2), providing that "no person shall be employed in any mill, factory or manufacturing establishment in this state more than ten hours in any one day except watchmen and employees when engaged in making necessary repairs or in case of emergency where life or property is in imminent danger." It was held that such statute was constitutional notwithstanding a proviso that "employees may work overtime not to exceed three hours in any one day, conditioned that payment be made for such overtime at the rate of time and one-half of the regular wage." The court sanctioned the view that this regulation was one of hours of service and not of wages and was therefore within a state's police power and could be enacted consistently with due process of law. The decision was made by a bare majority, and the force of the argument for unconstitutionality is indicated in several passages from the opinion. The court said in part: "There is a certain verbal plausibility in the contention that it was intended to permit thirteen hours' work if there be fifteen and one-half hours' pay, but the plausibility disappears upon reflection. The provision for overtime is permissive, in the same sense that any penalty may be said to be permissive. Its purpose is to deter by its burden, and its adequacy for this was a matter of legislative judgment under the particular circumstances. It may not achieve its end, but its insufficiency cannot change its character from penalty to permission. Besides, it is to be borne in mind that the Legislature was dealing with a matter in which many elements were to be considered. It might not have been possible, it might not have been wise, to make a rigid prohibition. We can easily realize that the legislature deemed it sufficient for its policy to give to the law an adaptation to occasions different from special cases of emergency for which it provided—occasions not of such imperative necessity, and yet which should have some accommodation; abuses presented by the requirement of higher wages. Or even a broader contention might be made that the legislature considered it a proper policy to meet the conditions long existent by a tentative restraint of conduct rather than by an absolute restraint, and achieve its purpose through the interest of those affected rather than by the positive fiat of the law.

We cannot know all of the conditions that impelled the law or its particular form. The Supreme Court, nearer to them, describes the law as follows: 'It is clear that the intent of the law is to make ten hours a regular day's labor in the occupations to which reference is made. Apparently the provisions permitting labor for the overtime on express conditions were made in order to facilitate the enforcement of the law, and in the nature of a mild penalty for employing one not more than three hours' overtime. It might be regarded as more difficult to detect violations of the law by an em-

ployment for a shorter time than for a longer time. This penalty also goes to the employee in case the employer avails himself of the overtime clause.'

But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise, or be convinced of the wisdom of its exercise (Rast *v.* Van Deman & L. Co., 240 U. S. 342, 365, 60 L. Ed. 679, 690, L. R. A. 1917A, 421, 36 Sup. Ct. Rep. 370). It is enough for our decision of the legislation under review was passed in the exercise of an admitted power of government; and that it is not as complete as it might be, not as rigid in its prohibitions as it might be, gives perhaps evasion too much play, is lighter in its penalties than it might be is no impeachment of its legality. This may be a blemish giving opportunity for criticism and difference in characterization, but the constitutional validity of legislation cannot be determined by the degree of exactness of its provisions or remedies. New policies are usually tentative in their beginnings; advance in firmness as they advance in acceptance. They do not at a particular moment of time spring full-perfect in extent or means from the legislative brain. Time may be necesary to fashion them to precedent, customs and conditions, and as they justify themselves or otherwise they pass from militancy to triumph or from question to repeal."

Master and Servant—Independent Contractor — Definition.—Two recent decisions by courts of last resort (Ennis *v.* Baumann Rubber Co., in the Supreme Court of Errors of Connecticut, 99 Atl. 1031, and Flari *v.* Dolph, in the Supreme Court of Missouri, 192 S. W. 949) adopt an abstract definition of an "independent contractor" which has heretofore been approved by several courts. He is said to be one "who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of his work."

In Ennis *v.* Baumann Rubber Co. it appeared that the plaintiff, not being in defendant's regular employment, verbally agreed with the defendant to sink a well upon the latter's premises for an agreed price per foot. The plaintiff met with an accident during the performance of the work through the breaking of a hoisting apparatus. The present suit was for damages for the personal injuries so received, on the theory that the relation of master and servant existed and the master was under obligation to furnish fit and safe tools and appliances. The plaintiff had a verdict, and in reversing the judgment thereon entered the appellate court said in part: "The jury was told that if the agreement for the digging of the well was, as the plaintiff claimed it to have been, that he should simply do the work, and that the defendant should furnish all the tools, ap-